

**Congress of the United States**  
**Washington, DC 20515**

740

September 25, 2018

The Honorable Ajit V. Pai  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Dear Chairman Pai:

We support swift deployment of 5G and are concerned that the proposed *Streamlining Deployment of Next Generation Wireless Infrastructure Declaratory Ruling and Third Report and Order* (“Declaratory Ruling and Order”) will set us on a path that will ultimately delay 5G efforts. Many cities and counties of varying sizes across the country have spoken out against this proposal and urged the Commission to cooperatively address key concerns so as to avoid harm to consumers and localities.<sup>1</sup> Given the reasons outlined below, we ask that you remove the item from the Open Meeting agenda and take the time needed to resolve these issues. Thoughtful consideration now will benefit consumers and avoid unnecessary delays that may result from future litigation.

We are excited about the opportunities that 5G will bring—including its potential to increase broadband connectivity, transform health care and transportation, and make our power grids more efficient—and we are eager to see 5G deployed. However, in order to achieve the best outcome for consumers, it is crucial that 5G be deployed in a way that carefully balances the interests of both communities and the wireless carriers. The Declaratory Ruling and Order clearly falls short of striking such a balance.

Localities must have the flexibility to negotiate terms with wireless carriers in order to meet the needs of their individual communities and residents. Limiting the purpose for which small wireless facility fees can be collected by cities and municipalities, as proposed by the Declaratory Ruling and Order, will only stifle local policy innovation, including efforts to bridge the digital divide. For example, cities in California, such as San Jose and Los Angeles, have worked with wireless carriers to negotiate agreements that allow for expedited small wireless

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<sup>1</sup> See e.g., comments filed this month in opposition by City of Anna, TX; Botetourt County, VA; City of Chicago, IL; City of Cincinnati, OH; Contra Costa County, CA; Cumberland County, NJ; City of Danville, VA; Fresno County, CA; Village of Greendale, WI; City of Hurst, TX; Johnson County, IA; City of Lake Forest, CA; Lamar County, GA; Lancaster County, SC; Latah County, ID; City of Louisville, KY; Monroe County, FL; Morgan County, AL; McKinley County, NM; City of McKinley, TX; City of Mount Vernon, NY; New York City, NY; City of Olmos Park, TX; City of Omaha, NE; City of Overland Park, KS; City of Philadelphia, PA; City of Rye, NY; Sacramento County, CA; City of San Francisco, CA; City of Seattle, WA; West Valley City, UT; and City of Yuma, AZ.

facility infrastructure deployment while helping to close gaps in broadband access and adoption across their communities.<sup>2</sup> The City of Lincoln, Nebraska has similarly demonstrated how local needs can be addressed by partnering with carriers to deploy small wireless facility infrastructure.<sup>3</sup>

Adoption of the Declaratory Ruling and Order may call into question the validity of existing agreements, causing confusion between the parties and inviting long, protracted litigation that will only impede the rapid deployment of these critical facilities. Additionally, it may forestall any such agreements in the future, thus undermining efforts to bridge the digital divide and harming productive relationships between wireless carriers and their communities.

The Declaratory Ruling and Order also turns its back on the unique characteristics that are so essential to our communities and often give us a “sense of place”—their appearance, history, and environmental qualities. By restricting local aesthetic and historical review requirements and limiting fees that cities and municipalities can levy, the Declaratory Ruling and Order undermines the ability of cities and municipalities to exercise control over the most fundamental aspects of a locality.

It is troubling that many cities and municipalities feel like they have not been heard by the Commission in this process.<sup>4</sup> For example, cities, municipalities, and the public were not given an opportunity to provide feedback on the proposed presumptive fee limits. The Commission’s failure to make a genuine effort to understand and take into account the perspectives of all stakeholders, including localities, raises doubts about whether the proposal in the Declaratory Ruling and Order will in fact yield the best result for consumers.

Furthermore, the lack of a real effort to consider the perspectives of cities and municipalities appears to be part of a larger alarming trend in the Commission’s work to streamline wireless broadband infrastructure deployment. While the Commission convened its Broadband Deployment Advisory Committee to examine this and other issues, the body is unbalanced in its composition, lacking representatives from cities and municipalities, despite repeated concerns raised by some of us as well as state and local officials.<sup>5</sup>

Finally, the faulty reasoning in the Declaratory Ruling and Order alone warrants that the Commission hit pause on moving forward with this item. The item assumes the savings that wireless carriers will have from paying lower fees will result in 5G deployment investment in rural areas. Yet, there is no guarantee that the savings will result in wider deployment, and

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<sup>2</sup> See City of San Jose, CA Comments, 4, September 18, 2018, <https://ecfsapi.fcc.gov/file/10918161513154/San%20Jose%20Ex%20Parte%20Letter%20%E2%80%93%20Docket%20Nos%20WT-17-79%20and%20WC-17-84.pdf>; City of Los Angeles, CA Comments, 2, September 19, 2018, <https://ecfsapi.fcc.gov/file/1091933119375/Ex%20Parte%20City%20of%20Los%20AngelesCA.pdf>.

<sup>3</sup> See City of Lincoln, NE Comments, 2, September 18, 2018, <https://ecfsapi.fcc.gov/file/1091905860458/LincolnNE-letter-FCC-DeclaratoryRuling-SmallCellTech9-18-19.pdf>.

<sup>4</sup> See, e.g., County of Granville, NC Comments, 1, September 18, 2018, <https://ecfsapi.fcc.gov/file/10919160096176/FCC%20Letter%20Ajit%20Pai%202018.pdf>; and Village of Lake Success, NY Comments, 1, September 19, 2018, <https://ecfsapi.fcc.gov/file/10919477416988/Response%20FCC%20Sept%202018.pdf>.

<sup>5</sup> See e.g., Letter to Chairman Pai, November 7, 2017, <https://docs.fcc.gov/public/attachments/DOC-353132A4.pdf>.



indeed the Declaratory Ruling and Order places no obligations or commitments on carriers to do so. Given the potential consumer harms that could result from hamstringing cities and municipalities, it is important that these dynamics be further explored before the Commission takes such drastic action.

We strongly hope that you will reconsider moving forward with this item and pursue a path that better balances the interests of communities and wireless carriers to maximize the benefit to consumers. Treating cities and municipalities as partners in the process now will put our nation on a path forward to winning the global race for 5G leadership.

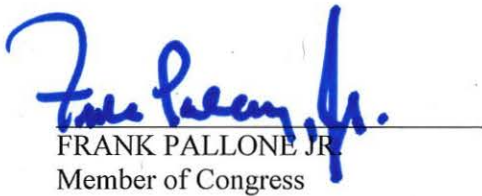
Sincerely,



JERRY MCNERNEY  
Member of Congress



MIKE DOYLE  
Member of Congress



FRANK PALLONE JR.  
Member of Congress



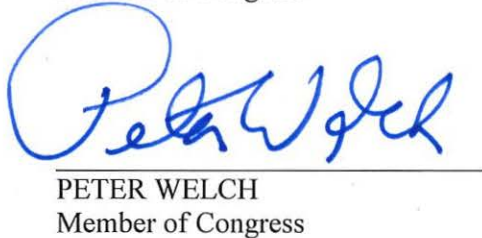
ELIOT L. ENGEL  
Member of Congress



DEBBIE DINGELL  
Member of Congress



YVETTE D. CLARKE  
Member of Congress



PETER WELCH  
Member of Congress



ANNA G. ESHOO  
Member of Congress



JOHN P. SARBANES  
Member of Congress

CC: The Honorable Michael O'Rielly, Commissioner, Federal Communications Commission  
The Honorable Jessica Rosenworcel, Commissioner, Federal Communications Commission  
The Honorable Brendan Carr, Commissioner, Federal Communications Commission



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

December 27, 2018

OFFICE OF  
THE CHAIRMAN

The Honorable John Sarbanes  
U.S. House of Representatives  
2444 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Sarbanes:

Thank you for your letter regarding Commission efforts to modernize our wireless infrastructure regulations. Our wireless infrastructure rules have been a poor fit for the 5G networks of the future, and our efforts to unleash spectrum for consumer use will be meaningless without the physical infrastructure needed to bring next-generation services to American consumers. That's because 5G networks will not depend on a few large towers but on numerous small cell deployments—deployments that are only beginning.

The Telecommunications Act of 1996 mandates that we act to ensure a pro-competitive, deregulatory national policy framework to accelerate this process. That's why we acted earlier this year to modernize our regulations and streamline the federal regulatory review process for 5G infrastructure.

As you note, many states and localities have similarly taken positive steps to reform their own laws so that their citizens can benefit from 5G. And I applaud municipalities that have prioritized mobile broadband by updating their rules for 5G infrastructure.

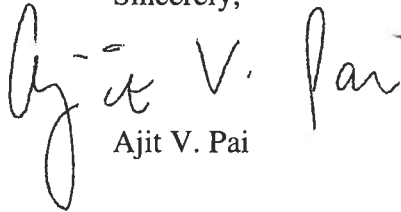
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As with all of our decisions, we reviewed a broad range of comments and listened carefully to the concerns of stakeholders. And thanks to this Commission's transparency initiative, they not only had a chance to comment when we opened this proceeding in 2017, but again when we released the full text of our proposed decision three weeks before our vote.

Page 2—The Honorable John Sarbanes

Thank you again for your correspondence, which we have included in the record of this proceeding. Please let me know if I can be of any further assistance.

Sincerely,

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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

December 27, 2018

OFFICE OF  
THE CHAIRMAN

The Honorable Peter Welch  
U.S. House of Representatives  
2303 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Welch:

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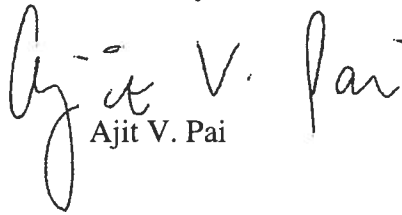
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Ajit V. Pai





FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

December 27, 2018

OFFICE OF  
THE CHAIRMAN

The Honorable Anna G. Eshoo  
U.S. House of Representatives  
241 Cannon House Office Building  
Washington, D.C. 20515

Dear Congresswoman Eshoo:

Thank you for your letter regarding Commission efforts to modernize our wireless infrastructure regulations. Our wireless infrastructure rules have been a poor fit for the 5G networks of the future, and our efforts to unleash spectrum for consumer use will be meaningless without the physical infrastructure needed to bring next-generation services to American consumers. That's because 5G networks will not depend on a few large towers but on numerous small cell deployments—deployments that are only beginning.

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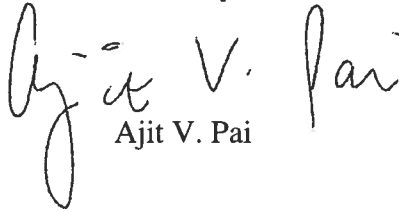
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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

December 27, 2018

OFFICE OF  
THE CHAIRMAN

The Honorable Yvette D. Clarke  
U.S. House of Representatives  
2058 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congresswoman Clarke:

Thank you for your letter regarding Commission efforts to modernize our wireless infrastructure regulations. Our wireless infrastructure rules have been a poor fit for the 5G networks of the future, and our efforts to unleash spectrum for consumer use will be meaningless without the physical infrastructure needed to bring next-generation services to American consumers. That's because 5G networks will not depend on a few large towers but on numerous small cell deployments—deployments that are only beginning.

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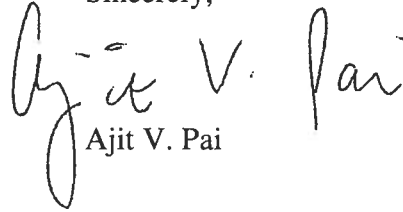
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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

December 27, 2018

OFFICE OF  
THE CHAIRMAN

The Honorable Eliot L. Engel  
U.S. House of Representatives  
2462 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Engel:

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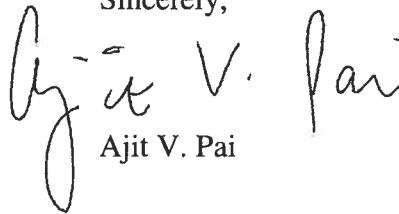
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FEDERAL COMMUNICATIONS COMMISSION  
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December 27, 2018

OFFICE OF  
THE CHAIRMAN

The Honorable Debbie Dingell  
U.S. House of Representatives  
116 Cannon House Office Building  
Washington, D.C. 20515

Dear Congresswoman Dingell:

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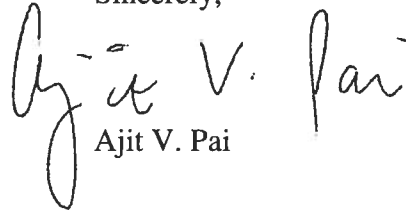
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December 27, 2018

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Washington, D.C. 20515

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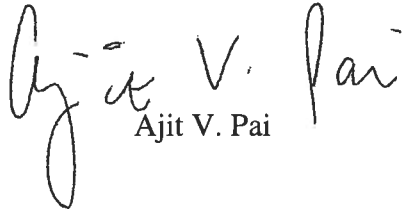
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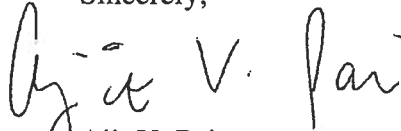
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The Honorable Jerry McNerney  
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2265 Rayburn House Office Building  
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As you note, many states and localities have similarly taken positive steps to reform their own laws so that their citizens can benefit from 5G. And I applaud municipalities that have prioritized mobile broadband by updating their rules for 5G infrastructure.

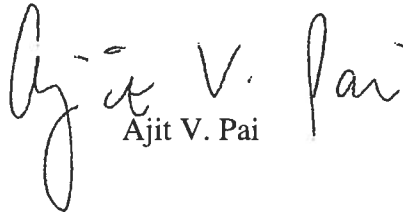
But in too many places, a patchwork of local rules and regulations continues to impede this essential build-out. For that reason, we took measured steps in September to address such rules and regulations—barriers that are inconsistent with federal law. Exorbitant big-city fees can operate as taxes on 5G that slow down deployment there and jeopardize the construction of 5G networks elsewhere. Accordingly, we set guard rails to ensure cities can recover their costs but not discriminate against new deployments. On a bipartisan basis, we also set reasonable shot clocks tailored to small wireless facilities while respecting the need for longer timelines when dealing with 200-foot towers. And we recognized the role that reasonable municipal regulations can play in ensuring the aesthetic character of a community. I believe the rules we adopted will help ensure that American consumers can benefit from the next generation of wireless connectivity and that the United States continues to lead the world in 5G.

As with all of our decisions, we reviewed a broad range of comments and listened carefully to the concerns of stakeholders. And thanks to this Commission's transparency initiative, they not only had a chance to comment when we opened this proceeding in 2017, but again when we released the full text of our proposed decision three weeks before our vote.

Page 2—The Honorable Jerry McNerney

Thank you again for your correspondence, which we have included in the record of this proceeding. Please let me know if I can be of any further assistance.

Sincerely,

  
Ajit V. Pai